

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MYLES NEES,

Plaintiff,

v.

JOSEPH BUGHER; CHRISTOPHER P. DIGIULIO; WARREN ROBERTS; LORETTA IRVING; THOMAS L. BRISTOL; ZOLTAN TEGLASSY; BRADY WHETTEN; DR. COLLADA; RN LYNCH; C. GWYNN; JOSHUA HIGHBERGER; GARETT LANEY; JEREMY NOFZIGER; and JOHN & JANE DOES 1-20

Defendants.

Case No.: 6:22-cv-01354-AR

ORDER

Adrienne Nelson, District Judge

United States Magistrate Judge Jeff Armistead denied plaintiff's Motion to Compel Discovery, ECF [41], on October 26, 2023. Judge Armistead found that defendants provided plaintiff with all non-privileged responsive documents to plaintiff's discovery requests, the remainder of the documents sought in plaintiff's motion were not the subject of discovery requests submitted by plaintiff to defendants, and plaintiff's motion did not comply with Local Rule of Civil Procedure 37-1, which requires that motions for an order compelling production provide the pertinent request, including any pertinent responses and/or objections, together with the legal arguments of the party. Order, ECF [50]. Plaintiff filed objections. *See* Objections to Magistrate Judge's Order, ECF [51].

Upon a party's timely objection to a magistrate judge's order deciding "a pretrial matter not dispositive of a party's claim or defense," a district court judge must consider the objection and "modify or set aside any part of the order that is clearly erroneous or contrary to law." Fed. R. Civ. P. 72(a).

Upon review, I find Judge Armistead's Order neither clearly erroneous nor contrary to law. Plaintiff's motion to compel is procedurally improper. "A party may serve on any other party a request within the scope of Rule 26(b)" to produce "any designated documents[.]" Fed. R. Civ. P. 34(a)(1)(A). If

a party fails to produce documents requested by another party pursuant to Federal Rule of Civil Procedure 34, the requesting party may move for an order compelling production. Fed. R. Civ. P. 37(a)(3)(B)(iv). Here, however, plaintiff's motion failed to show that defendants failed to produce discovery or that discovery produced was insufficient. Further, the documents sought in plaintiff's motion were not documents sought in prior discovery requests. Finally, plaintiff's motion failed to comply with Local Rule of Civil Procedure 37-1, which requires "the pertinent interrogatory, question, request, or notice of deposition, including any pertinent responses and/or objections, together with the legal arguments of the party[,"] to be attached to the motion. In the event plaintiff seeks additional discovery, plaintiff must do so through the proper channel—a request for production—and with specificity. Until then, and without compliance with Local Rule of Civil Procedure 37-1, the Court cannot compel defendants to produce discovery. Accordingly, plaintiff's objections are overruled.

IT IS SO ORDERED.

DATED this 6th day of December, 2023.



Adrienne Nelson
United States District Judge